

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
MISSOURI PACIFIC LINES**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the provision of Rule 14 of the agreement in effect by requiring Olon Hassell, T. A. Ray and E. H. Pruitt, Bridge and Building employees, to remain for duty at their headquarters outside of their regularly established working hours; and

(2) That Messrs. Hassell, Ray and Pruitt be paid at the rate of time and one-half for each day required to remain at their headquarters beginning with February 6, 1941, and until the present instructions are cancelled.

EMPLOYEES' STATEMENT OF FACTS: Under date of February 3, 1941, Bridge and Building Supervisor, Mr. S. Beacon, addressed individual letters to the three claimants, reading as follows:

"I understand that you are not staying at the town or headquarters in which B&B Gang 5 is located at nights.

"This is to notify you that you are required to stay at nights in same town or headquarters in which the gang is located so that you will be readily available for call in case of emergency, this unless you are given permission to be absent by your foreman.

"This does not refer to week end visits to your home, nor does it mean you cannot leave at nights for short periods of time provided you notify your foreman where you can be reached in case of emergency, but does mean, that you must stay at nights in the same town or headquarters where your gang is making its headquarters at night."

These instructions were made effective as of February 6, 1941, and from February 6, 1941, the employees involved in this claim have been required to remain at their headquarters, unless given permission by the foreman to be absent. Permission was requested and denied.

An agreement bearing date of August 1, 1938, is in effect between the parties which by reference is made a part of this Statement of Facts.

POSITION OF EMPLOYEES: Rule 14 of the current agreement governs the hours of service, overtime and calls of employees coming within the scope of the agreement. Rule 14 (a) reads as follows:

"(a) Except as otherwise provided in these rules, eight (8) consecutive hours, exclusive of the meal period, shall constitute a day's work."

In order to more clearly indicate to your Honorable Board that employes are expected to keep themselves available for service, the following rule, the same being 35, titled Week-End Visits, is quoted.

Rule 35.

"Employes will be allowed, when in the judgment of the management, conditions permit, to make week-end trips to their homes. Free transportation will be furnished consistent with the regulations. Any time lost on this account will not be paid for."

Under the above quoted rule, the Carrier is permitted to use its judgment as to requiring employes to remain with their outfits over the weekend. As they are only permitted to make weekend trips to their home when in the judgment of the Management conditions permit, it would necessarily follow that if the Carrier has the right to require employes to remain with their outfit cars over the weekend when conditions require, they have the same right to require employes to secure permission to leave their outfit cars and to advise the foreman as to their whereabouts, in case they desire to be absent during their off hours on week days or nights.

It is the contention of the Carrier that the instructions issued by the Bridge and Building Supervisor to the employes connected with this dispute, quoted in the Carrier's Statement of Facts, are not in violation of any rule as contained in the agreement with the Organization; that the claim is not supported by any rule as contained in the current agreement; and that upon the evidence submitted your Honorable Board should render an award upholding the Carrier's position.

OPINION OF BOARD: Pile Driver Foreman, Olin Hendrix, wrote to S. Beacon, Bridge and Building Supervisor, as follows:

"T. A. Ray is staying at home at Swan, E. H. Pruitt staying at home at Troup, W. E. Jones staying in trailer house. Ray 9 miles from outfit at night, no telephone. Pruitt lives 2 miles from Troup, which makes 20 miles from outfit, with no telephone. In case we need Ray or Pruitt, it would take three hours to get them.

"Please advise what to do about it."

Beacon addressed the following letter to the claimants, Hassell, Ray, and Pruitt:

"I understand that you are not staying at the town or headquarters in which B. and B. Gang No. 5 is located at nights.

"This is to notify you that you are required to stay at nights in the same town or headquarters at which the gang is located so that you will be readily available for call in case of emergency, this unless you are given permission to be absent by your foreman."

The employes contend that when they asked permission to leave, the foreman replied, "You can read the letter and see for yourself that by asking me permission to go home puts me on the spot." However, the foreman denied this statement and some other employes stated they were not denied permission to go home. There were two employes discharged because they did leave without permission. Later, they were reinstated. The records show there was some dissatisfaction in reference to the meals served at the camp cars.

Rule 33 deals with camp cars and how they shall be maintained, but does not require the employes to stay there.

Rule 34 provides that ice and water shall be furnished employes living in building and camp cars.

Rule 35 deals only with week end trips to employes' homes.

However, Rule 14 (a) does say eight (8) consecutive hours shall constitute a day's work. Section (c) and (d) refer to periods of less than a regular day's work of eight hours. Section (c) tells when an employe will not be paid for eight hours—Sunday and holidays, or when inclement weather prevents a full day's work, but when the employe is held on duty, he will be paid. Section (d) refers to calls.

There is nothing in Rule 14 requiring an employe to stay at the camp car or headquarters after he has completed his regular working day.

"There is nothing in the rules which says men may be required to hold themselves ready for a call in emergencies. If such a requirement was intended, it would of necessity be included in the rules."
Award No. 2072.

This Referee is unable to see any material distinction between this claim and the facts in Award No. 2072, and, therefore, on authority of that award, thinks the claim should be sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the carrier violated the current agreement.

AWARD

Claim (1 and 2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of March, 1943.